

2013 DRAFTING REQUEST

Bill

Received: **10/11/2012** Received By: **mduchek**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget** By/Representing: **Dombrowski**
May Contact: Drafter: **mduchek**
Subject: **Health - facilities** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **tamara.dodge@legis.wi.gov**

Pre Topic:

DOA:.....Dombrowski, BB0050 -

Topic:

CBRF definition and flexibility for inspections

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mduchek 1/15/2013	jdye 1/15/2013	phenry 1/15/2013	_____	srose 10/19/2012		State
/1				_____	lparisi 1/15/2013		State

FE Sent For:

<END>

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/P1	mduchek 10/19/2012	jdyer 10/19/2012	10/19/2012	_____	srose 10/19/2012		State

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1/15 jld *1/15* *Y*
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/P1	mduchek	P1 10/19 jcd		dm 10/19			

FE Sent For:

<END>

Dodge, Tamara

From: Hanaman, Cathlene
Sent: Monday, October 08, 2012 8:35 AM
To: Dodge, Tamara
Subject: FW: Statutory Language Drafting Request
Attachments: 602 CBRF Definition and Flexible Review of License Statutory Language Paper.doc; 602 CBRF Definition and Flexible Review of License.doc

From: Cynthia.Dombrowski@Wisconsin.gov [<mailto:Cynthia.Dombrowski@Wisconsin.gov>]
Sent: Monday, October 01, 2012 9:36 AM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Gauger, Michelle C - DOA; Dombrowski, Cynthia A - DOA
Subject: Statutory Language Drafting Request

Biennial Budget:2013-15

Topic: CBRF Definition and Flexibility

Tracking Code: BB0050

SBO Team: HSI

SBO Analyst: Dombrowski, Cynthia A - DOA
Phone: (608) 266-2214
E-mail: Cynthia.Dombrowski@Wisconsin.gov

Agency Acronym: DHS

Agency Number: 435

Priority: High

Intent:

Exclude from the definition of a CBRF private residences which are home to adults who independently arrange for and receive care, treatment or services from a person or agency that has no authority to exercise direction or control over the residence.

Further, give DHS Division of Quality Assurance the flexibility to determine whether a second on-site inspection of a new CBRF facility is necessary for licensure.

See attached issue paper and DHS proposed language.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

Community-Based Residential Facility: Definition and Flexible Review for Licensure

Decision Needed

Should the Department request statutory changes to the definition of a Community-Based Residential Facility (CBRF) to clarify the list of specific living arrangements that do not need a license to operate?

Should the Department request statutory changes to provide the Department the flexibility to determine whether a second onsite inspection is required for initial CBRF licensure?

Background

The Department requests statutory changes to the definition of a CBRF to clarify that a specific type of living arrangement does not need a license to operate. The Department proposes a modification to the list of living arrangements excluded by the statutory definition of a CBRF by adding “a private residence that is the home to adults who independently arrange for and receive care, treatment, or services from a person or agency that has no authority to exercise direction or control over the residence.” The Department already excludes this type of living arrangement in practice, but the exclusion is not clearly identified in statute. Residential licensure is intended for situations in which a provider delivers room, board, and care services in the provider’s facility; therefore, it is not necessary for the state to license or regulate private homes in which the owners or residents arrange for their own care. Clarifying the definition of a CBRF in statute will allow investigators to quickly resolve complaints relating to facilities that do not need to be licensed.

The Department also seeks the statutory authority to decide whether a second onsite inspection of a new CBRF facility is necessary for licensure. CBRFs seeking licensure with the Department must meet specific requirements, including application for licensure, caregiver background checks, fire inspection, and onsite inspection of the facility. Following an initial inspection, the Department notifies the facility, in writing, of any requirements the facility must correct. Once the facility demonstrates compliance, the Department issues a probationary license valid for a period of one year.

Wisconsin Statutes also mandate a second onsite inspection of the facility, which generally occurs six to eight months following initial inspection. The inspection must occur regardless of whether the facility was in compliance at the first inspection and regardless of the compliance history of the corporate entity that operates the CBRF. The Department estimates that approximately 85 percent of new CBRFs do not need a second onsite inspection. If the Department has the discretion to decide whether to conduct a second onsite inspection, it would continue to inspect CBRFs that have

difficulty coming into compliance following the first inspection and CBRFs with no affiliated corporate entity track record.

Current Language

The following language currently exists in statute:

Section 50.01 (1g) “Community-Based Residential Facility” means a place where five or more adults who are not related to the operator or administrator and who do not require care above intermediate level nursing care reside and receive care, treatment or services that are above the level of room and board, but that include no more than three hours of nursing care per week per resident. “Community-based residential facility” does not include any of the following:

- (a) A convent or facility owned or operated by members of a religious order exclusively for the reception and care or treatment of members of that order.
- (b) A facility or private home that provides care, treatment, and services only for victims of domestic abuse, as defined in s. 49.165 (1) (a), and their children.
- (c) A shelter facility as defined under s. 16.308 (1) (d).
- (d) A place that provides lodging for individuals and in which all of the following conditions are met:
 - 1. Each lodged individual is able to exit the place under emergency conditions without the assistance of another individual.
 - 2. No lodged individual receives from the owner, manager or operator of the place or the owner’s, manager’s or operator’s agent or employee any of the following:
 - a. Personal care, supervision or treatment, or management, control or supervision of prescription medications.
 - b. Care or services other than board, information, referral, advocacy or job guidance; location and coordination of social services by an agency that is not affiliated with the owner, manager or operator, for which arrangements were made for an individual before he or she lodged in the place; or, in the case of an emergency, arrangement for the provision of health care or social services by an agency that is not affiliated with the owner, manager or operator.
 - 3. An adult family home.
 - 4. A residential care apartment complex.
 - 5. A residential facility in the village of Union Grove that was authorized to operate without a license under a final judgment entered by a court before January 1, 1982, and that continues to comply with the judgment notwithstanding the expiration of the judgment.

Section 50.03 (4m) (b) If the applicant for licensure as a community-based residential facility has not been previously licensed under this subchapter or if the community-based residential facility is not in operation at the time application is made, the department shall issue a probationary license, except that the department may deny licensure to any person who conducted, maintained, operated or permitted to be maintained or operated a

community-based residential facility for which licensure was revoked within five years before application is made. A probationary license shall be valid for up to twelve months from the date of issuance unless sooner suspended or revoked under sub. (5g). Prior to expiration of a probationary license the department shall inspect the community-based residential facility and, if the community-based residential facility meets the applicable requirements for licensure, shall issue a regular license under sub. (4) (a) 1. b. If the department finds that the community-based residential facility does not meet the requirements for licensure, the department may not issue a regular license under sub. (4) (a) 1. b.

Proposed Change

The Department recommends the following language:

Section 50.01 (1g) (h) A private residence that is the home to adults who independently arrange for and receive care, treatment, or services for themselves from a person or agency that has no authority to exercise direction or control over the residence.

Section 50.03 (4m) (b) If the applicant for licensure as a community-based residential facility has not been previously licensed under this subchapter or if the community-based residential facility is not in operation at the time application is made, the department shall issue a probationary license, except that the department may deny licensure to any person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked within five years before application is made. A probationary license shall be valid for up to twelve months from the date of issuance unless sooner suspended or revoked under sub. (5g). Prior to expiration of a probationary license the department shall ~~inspect~~ evaluate the community-based residential facility and, if the community-based residential facility meets the applicable requirements for licensure; shall issue a regular license under sub. (4) (a) 1. b. If the department finds that the community-based residential facility does not meet the requirements for licensure, the department may not issue a regular license under sub. (4) (a) 1. b.

Desired Effective Date:	Upon passage of bill
Agency:	DHS
Agency Contact:	Darlene Sliwa
Phone:	266-8155

Community-Based Residential Facility: Definition and Flexible Review for Licensure

Decision Needed

Should the Department request statutory changes to the definition of a Community-Based Residential Facility (CBRF) to clarify the list of specific living arrangements that do not need a license to operate?

Should the Department request statutory changes to provide the Department the flexibility to determine whether a second onsite inspection is required for initial CBRF licensure?

Background

1. The Division of Quality Assurance (DQA) regulates and licenses assisted living facilities including CBRFs. New CBRFs must be licensed by the Bureau of Assisted Living (BAL) to operate in Wisconsin. As of January, 2012, there are 1,470 licensed CBRFs in Wisconsin.
2. A CBRF is defined in Wis. Stat. s. 50.01 (1g) as “a place where five or more adults who are not related to the operator or administrator and who do not require care above intermediate level nursing care reside and receive care, treatment or services that are above the level of room and board, but that include no more than three hours of nursing care per week per resident.” Several types of living arrangements are excluded from the definition and do not need to be licensed.
3. DQA proposes a modification to the list of living arrangements excluded by the statutory definition of a CBRF by adding “a private residence that is the home to adults who independently arrange for and receive care, treatment, or services from a person or agency that has no authority to exercise direction or control over the residence.” DQA already excludes this type of living arrangement in practice, but the exclusion is not clearly identified in statute. There is no need for the state to license or regulate private homes in which the owners or residents arrange for their own care. Residential licensure is intended for situations in which a provider delivers room, board, and care services in the provider’s facility. Depending on the level of services, however, others may mistake a private home for a provider facility, leading to a complaint.
4. It is expected that the number of CBRFs will increase in Wisconsin as federal and state initiatives aim to relocate individuals from institutional to community settings. DQA estimates five percent annual growth in the industry. BAL expects that this growth will lead to an increase in complaints relating to CBRFs. Clarifying the definition of a CBRF in statute will allow BAL investigators to quickly resolve complaints relating to facilities that do not

need to be licensed. Time saved on these investigations could be redirected to other critical workload, including investigating other types of complaints and completing the backlog of mandated surveys.

5. BAL spent approximately 80 hours annually in 2010 and 2011 investigating complaints alleging that this type of facility is operating as an unlicensed CBRF. Each investigation required approximately eight hours at a cost of \$97 per hour. The Department estimates that this statutory change would result in annual workload savings equivalent to \$7,800 AF in staff time.
6. CBRFs seeking licensure with the department must meet specific requirements, including application for licensure, caregiver background checks, fire inspection, and onsite inspection of the facility conducted by BAL staff. Following an initial inspection, DQA notifies the facility, in writing, of any requirements the facility must correct. Once the facility demonstrates compliance, DQA issues a probationary license valid for a period of one year. Wisconsin Statute also mandates a second onsite inspection of the facility, which generally occurs six to eight months later. The inspection must occur regardless of whether the facility was in compliance at the first inspection and regardless of the compliance history of the corporate entity that operates the CBRF.
7. DQA seeks the statutory authority to decide whether a second onsite inspection of a new CBRF facility is necessary for licensure. DQA estimates that approximately 85 percent of new CBRFs do not need a second onsite inspection. DQA's assessment is based on the findings of the initial onsite inspection, a lack of complaints about the facility, and the history of an affiliated corporate entity. DQA would continue to conduct a second onsite inspection of CBRFs that have difficulty coming into compliance following the first inspection and CBRFs with no affiliated corporate entity track record.
8. Approximately 70 percent of CBRFs are affiliated with another regulated entity, usually an assisted living facility. BAL considers the compliance history of these entities when awarding a license for a new CBRF because it provides an indication of their knowledge and compliance with the regulations and how they respond to challenges.
9. DQA estimates that it spends approximately 650 hours annually conducting second onsite inspections that are unnecessary. Each inspection requires approximately ten hours at a cost of \$97 per hour. Time saved on these inspections could be redirected to processing initial CBRF licenses more quickly. In addition, time saved could be redirected to other critical workload, including investigating complaints and completing the backlog of mandated surveys. The Department estimates that this statutory change would result in annual workload savings equivalent to \$63,000 AF in staff time.
10. Due to the shift in workload, DQA estimates that it could process five additional CBRF licenses annually if statutes were modified to clarify the definition of a CBRF and to provide the Department discretion in conducting a second onsite inspection. The Department estimates that the fees collected for licensure of five additional facilities would increase s. 20.435 (6)(jm) revenue by \$6,000 PR annually. This additional revenue would generate

equal GPR savings under s. 20.435 (6)(a) by transferring 0.10 FTE from GPR to PR s. 20.435 (6)(jm).

11. In summary, these statutory changes would result in an annual workload savings of approximately 730 hours or \$70,900 AF of staff time. However, because workload savings would be redirected to the existing backlog of mandated surveys, this statutory change would not reduce costs in the 2013-15 biennium. With the freed up staff time, the Department would be able to process additional CBRF licenses resulting in a \$6,000 increase in annual revenue and equal GPR savings.

Recommendation

1. Request changes to the statutory definition of a Community-Based Residential Facility (CBRF) to clarify that a specific living arrangement does not need a license to operate. Request a decrease of (\$700) GPR and an increase of \$700 PR in both FY 14 and FY 15.

ALT 1	Biennial Change to Base	
	Funding	Positions
GPR	(\$1,400)	
FED		
PR/PRS	\$1,400	
SEG		
TOTAL		

2. Request statutory changes to grant the Department the flexibility to determine whether a second onsite inspection is required for CBRF licensure. Request a decrease of (\$5,300) GPR and (0.10) FTE GPR and an increase of \$5,300 PR and 0.10 FTE PR in both FY 14 and FY 15.

ALT 2	Biennial Change to Base	
	Funding	Positions
GPR	(\$10,600)	(0.10)
FED		
PR/PRS	\$10,600	0.10
SEG		
TOTAL		



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0321/P1

MED:.....

JLD

DOA:.....Dombrowski, BB0050 - CBRF definition and flexibility for inspections

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

PWF
on 10/19
NDF

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don't gen ✓
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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HEALTH AND HUMAN SERVICES ← [CAPS]

HEALTH

*

Under current law, DHS licenses community-based residential facilities (CBRFs), which are defined, with certain exceptions, as places where five or more adults who are not related to the facility's operator or administrator and do not require care above intermediate level nursing care reside and receive care, treatment, or services that include no more than three hours of nursing care per week per resident. This bill specifies that the definition of a CBRF does not include a private residence that is the home to adults who independently arrange for and receive care, treatment, or services for themselves from a person or agency that has no authority to exercise direction or control over the residence.

Under current law, DHS must conduct an inspection of a CBRF before issuing a permanent license to operate a CBRF to an applicant. In addition, under current law, for certain applicants seeking a license to operate a CBRF, DHS must first issue a probationary license and conduct a second inspection of the CBRF before issuing a permanent license. This bill provides that DHS may, but is not required to, conduct a second inspection for these applicants. Under the bill, DHS may issue a permanent license if, after evaluating the facility, DHS finds that the CBRF meets the applicable requirements for licensure.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.01 (1g) (h) of the statutes is created to read:

50.01 (1g) (h) A private residence that is the home to adults who independently arrange for and receive care, treatment, or services for themselves from a person or agency that has no authority to exercise direction or control over the residence.

****NOTE: This provision adds an exception to the definition of "community-based residential facility." Some of the other currently listed exceptions to this definition are also listed as exceptions to the definition of "adult family home" in s. 50.01 (1), stats. Do you want to add this exception to the definition of "adult family home" as well?

SECTION 2. 50.03 (4m) (b) of the statutes is amended to read:

50.03 (4m) (b) If the applicant for licensure as a community-based residential facility has not been previously licensed under this subchapter or if the community-based residential facility is not in operation at the time application is made, the department shall issue a probationary license, except that the department may deny licensure to any person who conducted, maintained, operated or permitted to be maintained or operated a community-based residential facility for which licensure was revoked within 5 years before application is made. A probationary license shall be valid for up to 12 months from the date of issuance unless sooner suspended or revoked under sub. (5g). Prior to the expiration of a probationary license, the department shall ~~inspect~~ evaluate the community-based residential facility and, ~~if,~~ In evaluating the community-based residential facility, the department may conduct an inspection of the community-based residential facility. If, after the department evaluates the community-based residential facility, the department finds that the community-based residential facility meets the

- 1 applicable requirements for licensure, the department [✓] shall issue a regular license
2 under sub. (4) (a) 1. b. If the department finds that the community-based residential
3 facility does not meet the requirements for licensure, the department may not issue
4 a regular license under sub. (4) (a) 1. b.

History: 1975 c. 413; 1977 c. 29, 170, 205, 272, 418, 447; 1979 c. 221; 1981 c. 20, 72, 121; 1981 c. 314 s. 146; 1985 a. 29 ss. 1058, 3202 (56) (a); 1985 a. 176; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1), (3); 1987 a. 27, 127, 399; 1989 a. 31, 359; 1991 a. 39, 221; 1993 a. 27, 112, 375, 491; 1995 a. 27 ss. 3227 to 3232, 9126 (19); 1997 a. 27, 114; 2001 a. 16; 2003 a. 33; 2005 a. 264, 387; 2007 a. 20 s. 9121 (6) (a); 2007 a. 92; 2009 a. 28; 2011 a. 70.

****NOTE: I added language beyond what was suggested to ensure that DHS is still
able to conduct a second inspection if needed as part of the evaluation, as per the issue
paper. Is this additional language OK? [✓]

5

(END)

Duchek, Michael

From: Dombrowski, Cynthia A - DOA <cynthia.dombrowski@wisconsin.gov>
Sent: Tuesday, January 15, 2013 10:27 AM
To: Duchek, Michael
Subject: CBRF Budget Draft 0321/P1

Hi Mike,

Per our conversation, with respect to Section 1, we would prefer not to add the exception to the definition of an "adult family home" at this time. The exception was directed toward CBRFs and may have unintended consequences if it is included in the definition of an adult family home without further study. We agree with the suggested language in Section 2.

Please let me know if you have any further questions.

Thanks,
Cindy

Cynthia Dombrowski
Executive Policy and Budget Analyst
Wisconsin State Budget Office
608-266-2214 (p)
608-267-0372 (f)
cynthia.dombrowski@wisconsin.gov



DOA:.....Dombrowski, BB0050 - CBRF definition and flexibility for inspections

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

No changes except remove notes
D-note

Do not gen

4
1

AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

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11 to be maintained or operated a community-based residential facility for which
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18 If, after the department evaluates the community-based residential facility, the
19 department finds that the community-based residential facility meets the

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2 under sub. (4) (a) 1. b. If the department finds that the community-based residential
3 facility does not meet the requirements for licensure, the department may not issue
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✓ *g*
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5 (END)

d-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0321/1dn

MED:.....

Date

jld

Cynthia:

Per our conversation and your email on January 15, this is a new version of this item with the notes taken out but no additional changes made. If you later decide that further changes are desired, please let me know and I can always do another redraft again. Thank you. *

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0321/1dn
MED:jld:ph

January 15, 2013

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Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0321/1
MED;jld:ph

DOA:.....Dombrowski, BB0050 - CBRF definition and flexibility for inspections

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to: the budget.**

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HEALTH AND HUMAN SERVICES

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